IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

Crl.Rev.Pet.No. 3218 of 2005()

CRA.484/2001 of ADDL.SESSIONS COURT (ADHOC), KOTTAYAM
CC.710/1997 of JUDL.MAGISTRATE OF FIRST CLASS, PALA

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REVN. PETITIONER:

UMMEN MATHEW, S/O.MATHEW,
ILLICKALL HOUSE, VELIYANNOOR KARA,
VELIYANNOOR VILLAGE.

BY ADV. SRI.SUNIL CYRIAC
SMT.JASMINE ALEX
SMT.T.A.LUXY

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.BINDU SREEKUMAR
PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 17/10/2007, THE COURT ON 07-11-2007 PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. No. 3218 of 2005

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Dated: 7-11-2007

ORDER

In this revision filed under Sections 397 and 401 Cr.P.C. the revision petitioner who was the accused in C.C. 710 of 1997 on the file of the J.F.C.M.,Pala challenges the conviction entered and the sentence passed against him concurrently by the courts below for an offence punishable under Sec. 498 A I.P.C.

2. The case of the prosecution can be summarised as follows:-

P.W.2, Aleyamma is the daughter of P.W.3 (Kuriakose) who was the President of Veliyanoor Grama Panchayath. P.W.2 was the 4th among the children of P.W.3. She was first given away in marriage to one Thomas who was murdered by a neighbour. Thereafter she was married to the accused (Ummen Mathew) of Illikkal house, Veliyannoor Village on 8-6-1981. Their wedding was solemnized at St. Orthodox Cyrian Church, Puthenveli. During the period between 1985 and 1997 the accused used to physically and mentally torture Aleyamma both from her matrimonial home (Illikkal house) as also at Canada where the

accused was employed. The harassment of P.W.2 was for the purpose of getting the immovable property standing in the name of P.W.2 and her parents to be transferred in the name of the accused. Since the accused subjected P.W.2 (his wife) to ill - treatment and harassment with a view to coerce her to transfer her properties in his name, the accused has thereby committed an offence punishable under Sec. 498 A I.P.C.

3. On the accused pleading not guilty to the charge framed against him by the J.f.C.M., Pala for the aforementioned offence, the prosecution was permitted to adduce evidence in support of its case. The prosecution altogether examined 10 witnesses as P.Ws 1 to 10 and got marked 6 documents as Exts.P1 to P6.

4. After the close of the prosecution evidence, the accused was questioned under Section 313 (1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained his innocence. The accused did not examine any defence evidence but got marked Ext.D1 diary and Ext.D2 copy of letter.

5. The learned Magistrate after trial found the revision

petitioner/accused guilty of the offence and sentenced him to rigorous imprisonment for three years and to pay a sum of Rs. 3 lakhs by way of compensation to P.W.2 for the unbearable mental torture which she had to suffer at the hands of the accused. Aggrieved by the conviction and sentence passed against him by the trial court the revision petitioner preferred an appeal before the Sessions court, Kottayam as Criminal appeal 484 of 2001 . As per judgment dated 4-6-2005 the learned Addl. Sessions Judge (Adhoc-I) Kottayam dismissed the appeal confirming the conviction entered and the sentence passed against the revision petitioner. Hence this revision.

6. The only point which arises for consideration in this revision as to whether the conviction entered and the sentence passed against the revision petitioner are legally sustainable or not ?

7. I heard Adv. Sri. Sunil Cyriac, the learned counsel for the revision petitioner, the learned Public Prosecutor Sri. K.S. Sivakumar and Smt. Bindu Sreekumar, the learned counsel appearing for the de facto complainant (P.W.2).

THE POINT:

8. P.W.2 Aleamma is the wife of the accused. P.W.1

(Karol) is the daughter of P.W.2 (Aleamma) born to her first husband Thomas. P.W.3 (Kuriakose) is the father of P.W.2. P.W.4 (Kanthi) is the daughter born to P.W.2 in the accused. P.W.5 (Abraham) is the neighbour of the accused at Veliyannoor. P.W.6 (Jose) is the rubber tapper of P.W.3. PWs 5 and 6 are neighbours examined by the prosecution to prove the alleged cruelty meted out by the accused to his wife P.W.2. P.W.7 (Uthup) is an attester to Ext.P3 scene mahazar. P.W.8 (Philip) was the Circle Inspector Police, Ramapuram. He conducted some part of the investigation and proved Ext.P4 mahazar with regard to Ext.P2 marriage certificate and Ext.P5 kychit. P.W.9 (Joseph) was the Circle Inspector, Kaduthuruthi. He proved Ext.P1 F.I. statement given by P.W.2 and Ext.P6 F.I.R. registered by the Sub Inspector whose signature is familiar to him. PW.10 (Divakaran) who was the Circle Inspector, Ramapuram Police Station verified the investigation conducted by P.w.8 and laid the charge.

8. On behalf of the revision petitioner his learned counsel made the following submissions before me:-

The marriage between the revision petitioner/accused and P.W.2 was an arranged marriage. While in the case of P.W2 it was a second marriage, for the revision petitioner it was his first

marriage. P.W.3 the father of P.W.2 is admitted that it was after fully satisfying himself about the family background of the accused that he had given his daughter in marriage to the accused. On 26-3-1995 P.W.3 had executed a sale deed conveying his property in the joint names of the accused and P.W.2. After the marital partners fell out, Aleyamma filed a suit for a declaration that the aforesaid property was her sthreedhanam property over which her husband, the accused, has absolutely no right. The said suit was instituted before the Sub Court, Pala which dismissed the suit. In appeal preferred by her as A.S. 257 of 2001 this Court confirmed the said decree on 22-6-2005. It was after having been worsted before the civil court that Aleyamma came out with the present complaint before the police making false allegations against the accused. There was no allegation before the police about any sexual exploitation of the children by the accused. That was introduced only from the first time during the stage of evidence. The courts below have convicted the accused mainly on the basis of hearsay evidence and sympathy towards P.W.2. None of the allegations of cruelty and ill-treatment has been legally substantiated. The conviction recorded by the courts below overlooking these vital

aspects cannot be sustained.

9. I am afraid that I cannot agree with the above submissions. P.W.1 (Karol) is the daughter born to Aleyamma in her previous marriage. P.W.1 was aged 21, when hen examined before court on 26-2-1999. At that time she was studying in the 4th year of B.Sc Nursing at Mangalapuram. Her father Thomas was the first husband of her mother Aleyamma . It was after the death of the said Thomas that the accused Ummern Mathew married Aleyamma.

10. The evidence of P.W.1 is as follows:

The accused was behaving very cruelly towards her and her mother. The accused used to ask her to give him soap while he was taking bath. He used to peep through the ventilator while she was taking her bath. He would then knock at the bathroom door. If she refused to open the door he would become wild. After changing dress whenever she gave him soap he used to make prurient overtures at her and would try try to molest her. Fearing the accused she was always in the habit of locking the door while engaged in studies. He would knock at the door and ask her to open the door and if she opened the door he used to make lustful advances at her. The accused used to threaten her

that he would kill her and her mother if she did not persuade her mother to transfer the property in his name. He used to tell her mother Aleyamma that he would ravish her daughter. The accused used to show the same attitude right from her childhood. At a time when she was studying in the 3rd standard her mother had gone to take her bath. During the absence of her mother the accused called her by his side and he undressed himself exposing his genital had asked her to hold it. Most of the days he used to come home drunk and beat, fist and kick her mother. Once he dropped her mother in her sleep. He used to make attempts to cut her mother with a chopper. He used to flog her mother with a cane. Once her mother was sitting in the out-house. At that time the accused threw an empty gas cylinder on the top of the house saying that he would kill her.

11. The substance of the testimony of P.W.2 Aleyamma is as follows:-

After the murder of her first husband the accused married her on 8-6-1981 from Puthuveli St. John's Orthodox Syrian church. After her marriage she was staying in her house at Veliyannur. The accused was then not having any job. But thereafter he went along with his sister to Canada. He came

back after three years. Her father had 10 acres of landed property. At the time of her marriage, properties had been given her. After returning from Canada the accused was insisting her and her father to transfer the properties in his name. He started inflicting bodily torture on her. He used to hit her on the head with brandy bottle. He was in the habit of catching hold of her hair and dragging her. He had attempted to kill her by throttling. Finally, her father asked the accused to prepare the necessary conveyance deed for transferring four acres 80 cents of land along with the residential house in the name of P.W.2. But the document which the accused got prepared was a sale deed in favour of both the accused and P.W.2. Her father, however, signed the document without making any issue out of it. The deed was registered. Thereafter the accused again started picking up quarrels stating that the rest of the properties also should be transferred to him and threatened to drive her out in case his demand was not met. He sent her out of the house. After going to Canada, the accused called her to go to Canada in the year 1988. She went to Canada. While at Canada also the accused used to ill-treat her in connection with the properties. She stayed at Canada for nearly two years and came back alone.

About six months after her return to native place, she read a news item in the Mangalam daily to the effect that the accused was keeping a girl in his apartment at Canada and he had shot dead the girl. The said news item had also carried the photograph of the accused. In that case the Canadian Court sentenced the accused to 10 years imprisonment. After four years, he was deported to India and his passport was impounded at Bombay and he returned to the native place. Thereafter he again started picking up quarrels with P.W.2 with persistent demands to transfer the properties in his name. She was again subjected to all sorts of corporal torture. He once attempted to strangulate her to death using the nose chord of the cow. Once he had concealed a fishing hook in the rice meant for her. On another occasion he had kept the pipe of the gas cylinder loose and attempted to set her ablaze by igniting the gas which had leaked into the kitchen. One day night he came home drunk and was walking up and down with a knife in his hand. He then tied a churidar on his head and went to the cowshed and killed the calf using the knife. Next day morning when the children got up they got scared seeing the flesh and blood of the calf. Some portion of the calf's flesh was seen in the cauldron also. On 2-3-1997

the accused picked up a quarrel with P.W.2 demanding transfer of the property in his name. He took out a chopper and proclaimed that he would kill her that day. After grinding the chopper he kept the same in the car porch. P.W.2 was terribly afraid and she took asylum in the house of her father's elder brother's son along with P.W.4, the daughter born to the accused. After staying in that house for one day P.W.2 and her children took refuge in a Convent at Njarallur near Kizhakkambalam. There is a school attached to the said Convent and P.W.2 is teaching in that school. Her elder daughter was studying in that Convent. Thereafter the accused did not make any enquiries about P.W.2 or her children. She had approached the High Court against the harassment by the accused and also seeking divorce. Ext.P1 is the first information statement given by her to the Ramapuram Police. The conduct of the accused towards his own daughters was very cruel. One day he came home drunk at about 1.30 in the night. After undressing himself he went to the bed of his daughter P.W.4 and asked her to hold his erected penis. The small girl got scared and came running to P.W.2. The accused assaulted P.W.2 and the girl for not obeying him. Similarly when her daughter P.W.1 was taking bath the accused used to peep through the

ventilator. He would knock at the bathroom door and when the girl came out with her dress on, he used to catch hold of the girl. The girl used to scream aloud.

12. P.W.4 the daughter born to the accused and P.W.2 also gave testimony about the acts of ill-treatment including the lascivious overtures made by the accused both towards her and her elder sister P.W.1.

13. No doubt, there are a few contradictions, omissions, exaggerations and embellishments in the testimony of the aforesaid witnesses. But the main core of their evidence stands unshamen inspite of a dexterous, incisive and searching cross-examination. Probably it was the strong desire of P.W.2 to endure the sufferings which had made her to put up with the atrocities at the hands of the accused. She had two young girls to look after and that might have been uppermost in her mind dissuading her to end her life. The ill-treatment meted out by the accused with persistent demands for property and the extreme sexual perversion shown by the accused were sufficient to drive her to the extreme step of ending her life. If the above conduct of the accused does not amount to matrimonial cruelty, there cannot be any better example to demonstrate what is cruelty as

contemplated under Sec. 498 - A I.P.C. The accused was coercing P.W.2 and her father to transfer properties in his name and he partly succeed in cheating them by creating a sale deed jointly in his name and in the name of his wife after making them believe that the transfer was being effected in the name of his wife only. The conviction entered and the sentence passed by the courts below do not warrant interference by this Court sitting in revision.

In the result, this Revision is dismissed confirming the conviction entered and the sentence passed against the revision petitioner.

V. Ramkumar, Judge.

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